

LATHAM & WATKINS LLP
Steven N. Feldman (Bar No. 281405)
steven.feldman@lw.com
355 South Grand Avenue
Los Angeles, California 90071
(213) 485-1234

LATHAM & WATKINS LLP
Shlomo Fellig (pro hac vice)
shlomo.fellig@lw.com
200 Clarendon Street
Boston, Massachusetts 02116
(617) 948-6000

Attorneys for Defendant Whaleco Inc.

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

ELI SILVA, on behalf of himself
and all others similarly situated,

Plaintiff,

v.

WHALECO, INC., d/b/a TEMU,

Defendant.

Case No. 3:24-cv-02890-SK

**DECLARATION OF MICHAEL TRINH
IN SUPPORT OF DEFENDANT
WHALECO INC.'S MOTION TO COMPEL
ARBITRATION**

1 I, Michael Trinh, declare as follows:

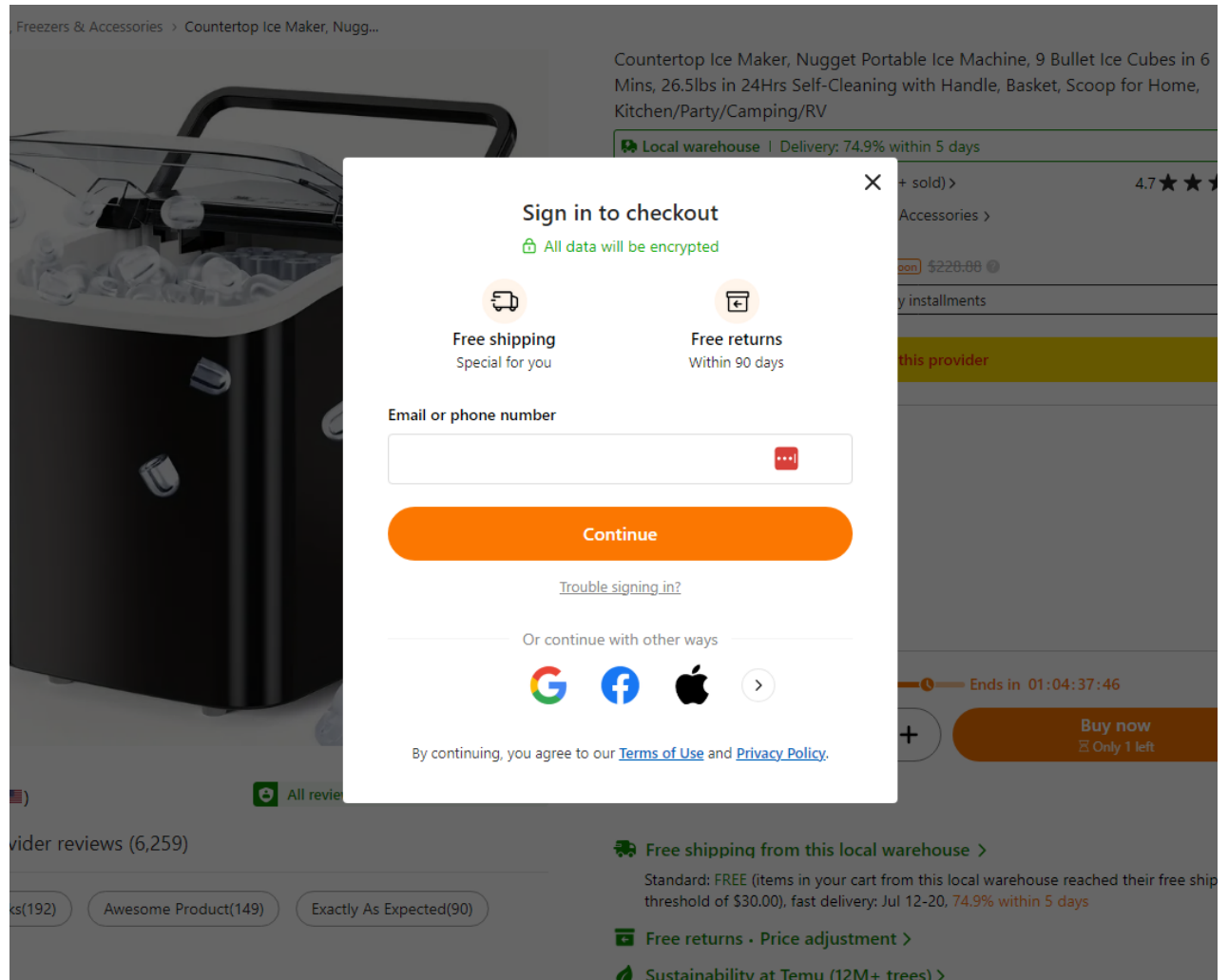
2 1. I am a Customer Service Manager at Whaleco Inc. (doing business as “Temu”). I
3 make this Declaration in support of Defendant Whaleco’s Motion to Compel Arbitration; the facts
4 set forth herein are based on my personal knowledge and review of company records, and, if called
5 upon to do so, I can and will competently testify to these facts.

6 2. Before making purchases on Temu’s website or mobile application in February
7 2024, users were required to accept Temu’s Terms of Use (the “Terms”).

8 3. When a user registered for a Temu account, they were shown two registration
9 prompts (the “Registration Prompt(s)”). The first Registration Prompt included: (i) a field to
10 register for an account by entering an email or a phone number, along with a corresponding
11 “Continue” button to affirm assent; and (ii) alternative buttons allowing the user to “Continue” by
12 instead registering via their existing Google, Facebook, Apple, or X (Twitter) account.
13 Immediately below these registration options was a notice stating: “By continuing, you agree to
14 our **Terms of Use**[.]”

15 4. As shown below, in Figure 1, the entire first Registration Prompt was displayed
16 clearly on one screen; consequently, a user did not need to scroll to see any part of it, including
17 the link to the Terms.

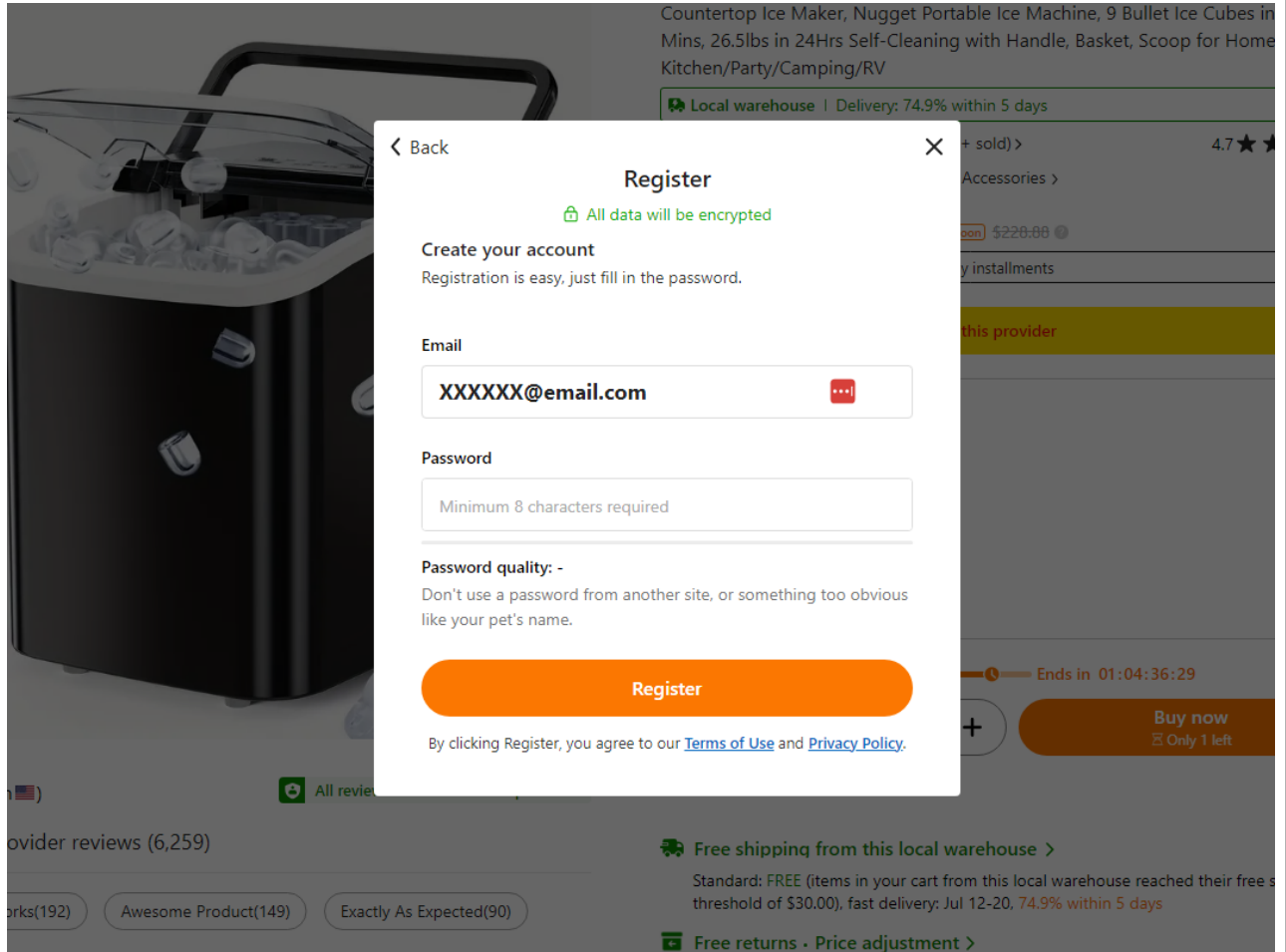
First Registration Prompt (Fig. 1)



5. A user who clicked the hyperlink to the Terms would see the Terms in a new browser window.

6. After a user entered their email address and clicked the “Continue” button, a second notice relating to their consent to Temu’s “Terms of Use” was displayed on the second Registration Prompt. As shown below, in Figure 2, the text stated, “By clicking Register, you agree to our **Terms of Use[.]**”

Second Registration Prompt (Fig. 2)



7. A user then created a password for their Temu account and clicked the “Register” button immediately below the Terms link.

8. After a user assented to Temu’s Terms, the Terms continued to be available to them as a hyperlink in the footer of Temu’s website and within the menu of Temu’s mobile application.

9. A registered Temu user (regardless of the method of registration) was required to assent to the Terms each time were they to input their credential to log back in to Temu’s website or mobile application.

10. Only after a user assented to Temu’s Terms were they able to buy products, follow brands, leave product reviews, and receive notifications—among other methods of interacting with Temu.

1 11. Temu’s records show that on February 21, 2024, Plaintiff entered his email address,
2 clicked the “Continue” button, and then created a password for his Temu account and clicked the
3 “Register” button immediately above the Terms link.

4 12. Attached as **Exhibit A** is a true and correct copy of the Terms in effect when
5 Plaintiff registered for his Temu account on February 21, 2024, and made the purchase at issue on
6 February 21, 2024.

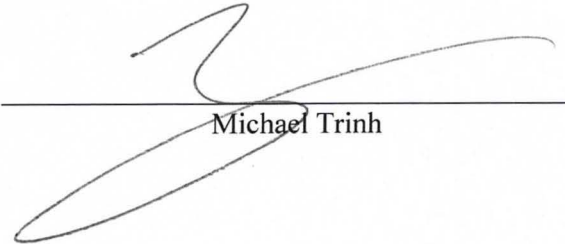
7 13. To the best of my knowledge, Plaintiff did not provide Temu with written notice
8 within 30 days of his agreement to the Terms requesting to opt out of the Arbitration Agreement;
9 Temu did not receive any notice from Plaintiff of this lawsuit.

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I declare under penalty of perjury that the foregoing is true and correct.

Executed on July 15, 2024.



Michael Trinh